

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARK S. DEARDORFF,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of the Social Security  
Administration,

Defendant.

CASE NO. C12-6040 RJB

ORDER ADOPTING REPORT AND  
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of Magistrate Judge J. Richard Creatura. Dkt. 17. The Magistrate Judge recommends that the Commissioner's decision to deny disability insurance benefits and supplemental security income benefits be reversed and this matter remanded for further administrative proceedings. *Id.* The Defendant has filed objections to the Report and Recommendation and requests the Court enter judgment affirming Defendant's decision finding Plaintiff not disabled. Dkt. 19.

The Defendant objects to two findings of Magistrate Judge Creatura. First, the Defendant objects to the finding that the ALJ had a duty to further develop the record regarding Plaintiff's venous insufficiency edema (Dkt. 17 at 6-10). Defendant contends that neither Plaintiff nor the Report and Recommendation relied upon medical evidence to show that Plaintiff's leg impairment

1 met the 12-month durational requirement. Dkt. 19 pp. 2-4. Although the record demonstrated the  
2 ALJ was justified in discounting the Plaintiff's credibility, the lack of credibility is an insufficient  
3 reason to deny the ongoing existence of a severe impairment where the Plaintiff's physical condition  
4 supports the testimony of an ongoing physical impairment. The Magistrate Judge properly found that  
5 the ALJ was required to further investigate the extent of this condition to fully and fairly develop the  
6 record. See *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001); *Brown v. Heckler*, 713  
7 F.2d 411, 443 (9th Cir. 1983) The ALJ's conclusion that Plaintiff's venous insufficiency edema  
8 caused no more than minimal limitation that is expected to last at least 12-months is not  
9 supported by substantial evidence in the record.

10 Second, the Defendant objects to the finding that the ALJ improperly assessed an opinion  
11 from Norma Brown, Ph.D. regarding Plaintiff's mental limitations. (Dkt. 17 at 11-17). The  
12 Defendant contends that the Magistrate Judge erred in finding that Dr. Brown's opinion that  
13 Plaintiff suffered from PTSD, panic attacks and depression was uncontradicted. Dkt. 19 pp. 4-6.  
14 Defendant argues that Dr. Brown's opinion was inconsistent with the opinion of a reviewing  
15 consultant. However, as detailed in the Report and Recommendation, the reviewing consultant,  
16 Dr. Regets, did not render particular diagnoses nor contradict Dr. Brown's opinion regarding  
17 Plaintiff's PTSD, panic attacks and depression. The ALJ made no reference to Dr. Regets'  
18 opinion in his decision and presumably, did not rely on it in discounting Dr. Brown's opinion.  
19 The Report and Recommendation properly found Dr. Brown's opinion to be uncontradicted.  
20 The ALJ's conclusion that Dr. Brown's conclusion was inconsistent with the medical records is  
21 not supported by substantial evidence in the records.

22 The Court finds Defendant's objections without merit.  
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1 The Court, having reviewed the Report and Recommendation of Judge J. Richard  
2 Creatura, United States Magistrate Judge, and the relevant record, does hereby find and

3 **ORDER:**

- 4 (1) The Court adopts the Report and Recommendation.
- 5 (2) The matter is **REVERSED** and **REMANDED** pursuant to sentence four of 42  
6 U.S.C. § 405(g) to the Commissioner for further consideration.
- 7 (3) **JUDGMENT** is for Plaintiff and the case should be closed.
- 8 (4) The Clerk is directed to send copies of this Order to counsel of record.

9 Dated this 19<sup>th</sup> day of February, 2014.

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12 ROBERT J. BRYAN  
13 United States District Judge  
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